

From: Matthew Sienko
To: Microsoft ATR
Date: 1/23/02 1:20pm
Subject: Microsoft Settlement

Hello,

I have been looking at the proposed settlement in the Microsoft antitrust trial and have become very concerned that it does not address important issues. In the end, this settlement fails to restrict Microsoft's anticompetitive behavior and would be a very negative outcome of this case for everyone except Microsoft. I would like to reiterate comments made by Dan Kegel in his essay that can be found at the link below:

<http://www.kegel.com/remedy/remedy2.htm>

The problems identified above with the Proposed Final Judgment can be summarized as follows:

* The PFJ doesn't take into account

Windows-compatible competing operating systems

Microsoft increases the Applications Barrier to Entry by using restrictive license terms and intentional incompatibilities. Yet the PFJ fails to prohibit this, and even contributes to this part of the Applications Barrier to Entry.

* The PFJ Contains Misleading and Overly Narrow Definitions and Provisions

The PFJ supposedly makes Microsoft publish its secret APIs, but it defines "API" so narrowly that many important APIs are not covered.

The PFJ supposedly allows users to replace Microsoft Middleware with competing middleware, but it defines "Microsoft Middleware" so narrowly that the next version of Windows might not be covered at all.

The PFJ allows users to replace Microsoft Java with a competitor's product -- but Microsoft is replacing Java with .NET. The PFJ should therefore allow users to replace Microsoft.NET with competing middleware.

The PFJ supposedly applies to "Windows", but it defines that term so narrowly that it doesn't cover Windows XP Tablet PC Edition, Windows CE, Pocket PC, or the X-Box -- operating systems that all use the Win32 API and are advertised as being "Windows

Powered".

The PFJ fails to require advance notice of technical requirements, allowing Microsoft to bypass all competing middleware simply by changing the requirements shortly before the deadline, and not informing ISVs.

The PFJ requires Microsoft to release API documentation to ISVs so they can create compatible middleware -- but only after the deadline for the ISVs to demonstrate that their middleware is compatible.

The PFJ requires Microsoft to release API documentation -- but prohibits competitors from using this documentation to help make their operating systems compatible with Windows.

The PFJ does not require Microsoft to release documentation about the format of Microsoft Office documents.

The PFJ does not require Microsoft to list which software patents protect the Windows APIs. This leaves Windows-compatible operating systems in an uncertain state: are they, or are they not infringing on Microsoft software patents? This can scare away potential users.

* The PFJ Fails to Prohibit Anticompetitive License Terms currently used by Microsoft

Microsoft currently uses restrictive licensing terms to keep Open Source apps from running on Windows.

Microsoft currently uses restrictive licensing terms to keep Windows apps from running on competing operating systems.

Microsoft's enterprise license agreements (used by large companies, state governments, and universities) charge by the number of computers which could run a Microsoft operating system -- even for computers running Linux. (Similar licenses to OEMs were once banned by the 1994 consent decree.)

* The PFJ Fails to Prohibit Intentional Incompatibilities Historically Used by Microsoft

Microsoft has in the past inserted intentional incompatibilities in its applications to keep them from running on competing operating systems.

* The PFJ Fails to Prohibit Anticompetitive Practices Towards OEMs

The PFJ allows Microsoft to retaliate against any OEM that ships Personal Computers containing a

competing Operating System but no Microsoft operating system.

The PFJ allows Microsoft to discriminate against small OEMs -- including regional 'white box' OEMs which are historically the most willing to install competing operating systems -- who ship competing software.

The PFJ allows Microsoft to offer discounts on Windows (MDAs) to OEMs based on criteria like sales of Microsoft Office or Pocket PC systems. This allows Microsoft to leverage its monopoly on Intel-compatible operating systems to increase its market share in other areas.

* The PFJ as currently written appears to lack an effective enforcement mechanism.

Considering these problems, one must conclude that the Proposed Final Judgment as written allows and encourages significant anticompetitive practices to continue, and would delay the emergence of competing Windows-compatible operating systems. Therefore, the Proposed Final Judgment is not in the public interest, and should not be adopted without addressing these issues.

Please do not allow this settlement to stand in its current form as it does little, at best, to limit Microsoft's anticompetitive behavior.

Thank You,
Matthew D. Sienko

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